

CHRISTOPHER J. CHRISTIE
United States Attorney
Peter Rodino Federal Building
970 Broad Street, Suite 700
Newark, NJ 07102
Tel: (973) 645-2700
Fax: (973) 645-2702

MICHAEL J. GUZMAN
Principle Deputy Assistant Attorney General
DIANNE M. SHAWLEY
DAVID E. STREET
DAVID L. GORDON
United States Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 514-0096
Fax: (202) 616-6583

Attorneys for the United States

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

)	Chapter 11
In Re:)	
)	Case Nos. 01-30135(RG) and
G-I HOLDINGS INC.,)	01-38790(RG)
(f/k/a GAF Corporation) and ACI INC.,)	(Jointly Administered)
)	
Debtors.)	Hon. Rosemary Gambardella, U.S.B.J.
)	

**UNITED STATES' OBJECTIONS TO DISCLOSURE STATEMENT FOR
FIRST AMENDED JOINT PLAN OF G-I HOLDINGS INC. AND ACI INC.
PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE,
ON BEHALF OF THE DEPARTMENT OF THE INTERIOR, THE DEPARTMENT
OF COMMERCE, AND THE ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES the United States of America, on behalf of the above identified
departments and agency, to file its Objections to Debtors' Disclosure Statement for First

Amended Joint Plan of G-I Holdings Inc. and ACI Inc. Pursuant to Chapter 11 of the United States Bankruptcy Code (the “Disclosure Statement”). The Disclosure Statement must contain “adequate information.” 11 U.S.C. § 1125(a)(1). The term “adequate information” means “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.” 11 U.S.C. § 1125(a)(1).

The preparation and filing of a disclosure statement “is a critical step in the reorganization of a Chapter 11 debtor.” Krystal Cadillac-Oldsmobile, GMC Truck, Inc. v. General Motors Corporation, 337 F. 3d 314, 322 (3d Cir. 2003), *quoting* Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3d Cir. 1988). Indeed, disclosure is “the pivotal concept in reorganization procedure under the Code.” Oneida Motor Freight, 848 F.2d at 417.^{1/} It is particularly important to the United States, in this case where its claims for environmental response costs and natural resource damages exceed \$350 million, that the Plan Sponsor, the Debtors and the only creditors committee in this case – all of whom have fiduciary responsibilities to the remainder of the creditor body – provide sufficient information to meet the Bankruptcy Code’s disclosure requirements.^{2/}

^{1/} The quote is from Collier on Bankruptcy and may be found, with a slight modification, at 7 Collier on Bankruptcy, ¶ 1125.02 (15th Ed. Rev. 2004).

^{2/} The Tax Division of the United States Department of Justice has filed a proof of claim on behalf of the Internal Revenue Service (“IRS”) for the recovery of hundreds of millions of dollars in priority and general unsecured claims in this matter. Nothing in this Objection should be read to imply any limitation on the IRS claims, or to imply that the Environment and Natural Resources Division of the Justice Department (“ENRD”) takes any position with respect to the IRS claims. The Tax Division has filed an objection to the Disclosure Statement, which ENRD

OBJECTION NO. 1 (Omitted Critical Information)

The Disclosure Statement in its present form does not provide even the most basic information needed for a hypothetical reasonable investor typical of holders of claims or interests of Classes 3A, 5, 7, to enable them to make an informed judgment about the Amended Joint Plan of Reorganization (the "Plan"). By way of example and without prejudice to describing other failings, the Disclosure Statement:

- a. does not disclose the estimated recoveries (percentage basis) for those classes.
- b. does not include Exhibit D, "New G-1's" *pro forma* balance sheet and projected financial information.
- c. does not include Exhibit E, the liquidation analysis, which is likely to be deficient in any case because the projections underlying it have not been compiled or examined by independent accountants.
- d. includes no estimate of the aggregate amount of administrative expense claims, including compensation and reimbursement claims.
- e. includes no estimate of the aggregate amount of environmental claims, notwithstanding timely submissions of proofs of claim by the United States and the state of Vermont, the holders of the largest environmental claims.

OBJECTION NO. 2 (Untimely Information)

Debtors' planned last-minute provision of the information described in objections 1a - 1e on the day prior to the hearing on the adequacy of the Disclosure Statement will provide in effect

supports, except to the extent that any positions taken by the Tax Division may conflict with those expressed herein.

no opportunity for creditors to determine whether the information provided complies with 11 U.S.C. § 1125(a)(1).

OBJECTION NO. 3 (United States' Adversary Proceeding)

The Disclosure Statement does not discuss the United States' adversary proceeding against Debtor G-I Holdings, Inc. ("G-I") for injunctive relief under Section 303 of the Clean Air Act, 42 U.S.C. § 7603, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, relating to the Vermont Asbestos Group Site, and inform creditors that G-I and reorganized G-I may need to perform injunctive relief at the Site if the United States is successful in the adversary proceeding.

OBJECTION NO. 4 (Discriminatory Treatment of General Unsecured Creditors Under the Plan)

The Disclosure Statement is silent as to Plan Consideration, other than the \$775 million in value to be paid to the Asbestos Trust. Thus, non-asbestos general unsecured creditors have no basis for determining whether or how much of a recovery they will receive under the Plan. The creditors likewise have no basis to understand why all unsecured creditors are not sharing in the \$775 million and what Debtors' alleged justification for discriminating among unsecured creditors might be.

OBJECTION NO. 5 (Absolute Priority Rule and New Value Exception)

Debtors state that because unsecured claims are classified logically into classes based upon their origins, and are to be paid (albeit an undisclosed percentage on their claims), and that equity interests are to be paid nothing, the Plan is fair and equitable and satisfies the absolute priority rule. *Disclosure Statement*, § I.C. This claim is baffling, given that Classes 3B, 8, and

10B are to be paid in full while Classes 3A, 5, 6, and 7 are impaired, and it is impossible to determine whether Classes 3A, 6 and 7 will be paid at the same rate on their allowed claims as Class 6. Moreover, the Plan Sponsor, who holds over 99% of Debtors' stock, will receive 99% of the stock of the reorganized Debtors. *See, e.g., Disclosure Statement* § V.B.20. Under the absolute priority rule, he should receive nothing. Thus, the assertion that the absolute priority rule is satisfied is simply wrong.

Assuming that the Plan is re-configured to provide all of the general unsecured creditors with an identical recovery, nevertheless, because the Plan Sponsor will receive virtually all of the stock of the reorganized Debtors, the Plan can be confirmed only if it meets the new value exception to the absolute priority rule. There is no discussion in the Disclosure Statement as to the new value the Plan Sponsor has provided under the Plan in order to obtain an equity interest in the reorganized Debtors. *See Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Partnership*, 526 U.S. 434, 453-58 (1999). Likewise, there is no discussion as to how the Plan Sponsor can retain equity in the absence of any competition for that equity. *Id.*

OBJECTION NO. 6 (Global Settlement Terms and Justification)

The key to the Plan is the settlement of claims described in Section I.B of the Disclosure Statement (the so-called "Global Settlement"). No writing constituting the Global Settlement has been produced to the general unsecured creditor body in this case. The basis for the Global Settlement is described only in the most general of terms in Section I.B.2. For example, it is stated that the Asbestos Claimants Committee (the "Committee") and the Legal Representative allege that the liability of G-I for asbestos claims and demands exceeds the value of G-I's estate by "several billion dollars," yet no information has been provided as to the value that any experts

retained by the Committee, the Debtors, the Legal Representative or the Plan Sponsor ascribe to these claims. This is true notwithstanding Debtors' admission that the "estimation of G-I's asbestos liability is a central issue in G-I's Chapter 11 Case." *Disclosure Statement*, § IV.I.

Likewise, no information has been provided as to the litigation or settlement values the various parties to the Global Settlement ascribe to the estate's RICO action against various attorneys and law firms, its successor liability action (in tandem with BMCA), the Committee's ISP fraudulent transfer claim, and its motion for derivative standing to prosecute alleged avoidance claims. In particular, holders of general unsecured claims that are not covered under the Global Settlement need to know how the Debtors and the Committee viewed the costs and benefits of proceeding with the prosecution of an action to avoid the 1994 Transaction. The Debtors and the Committee, in particular, need to disclose the requested litigation/ settlement values and cost/benefit analyses in order to fulfill their fiduciary duties to the creditors who are not parties to the settlement. Their failure to do so makes it impossible for creditors whose claims are not included in the "Global Settlement" to know whether Debtors' estate has received adequate consideration on account of these claims.

OBJECTION NO. 7 (Global Settlement Procedures)

The Disclosure Statement should inform creditors that the United States believes the so-called "global" settlement is a misnomer because important constituencies in the case, including the governmental environmental regulators, were not invited to participate and, as might be expected, would be provided unlawful discriminatory treatment under the settlement.

OBJECTION NO. 8 (Discriminatory Treatment of Asbestos Unsecured Creditors and Other Unsecured Creditors)

The Disclosure Statement provides no analysis, discussion or estimation as to the total value of the asbestos claims against Debtors. Debtors have advised that at least some holders of general unsecured claims are likely to receive a 6% recovery on their claims. Assuming that the holders of asbestos claims are being paid at the same rate, the settlement value of the asbestos claims exceeds \$11 billion. This far exceeds the value ascribed to asbestos claims in other large bankruptcy cases and no basis for such a discrepancy has been disclosed.

OBJECTION NO. 9 (Class 4: Environmental Claims for Remedial Relief)

The Disclosure Statement fails to explain the purpose of this Class, which is defined to relate only to Debtors' currently owned or operated property. *Plan Definition* 1.1.65. The Class is described as unimpaired. Liability for owned property generally springs anew upon revesting in the reorganized debtor, see In re CMC Heartland Partners, 966 F.2d 1143 (7th Cir. 1992), or may be an administrative expense of the estate, Pennsylvania v. Conroy, 24 F.3d 568 (3d Cir. 1994). Virtually all chapter 11 Plans in other cases do not have a class for such liability. The Disclosure Statement therefore needs to explain why it is necessary in this case, the effect on any liabilities relating to any owned sites, and should identify and describe all owned sites of the Debtors that are known to have environmental contamination and how Debtors are proposing the Plan might or might not affect such sites or liabilities therefor. The Disclosure Statement should also explain whether or not it is attempting to distinguish in any way between "remedial action" and other kinds of response actions which have different definitions under environmental law.

OBJECTION NO. 10 (Equitable Remedies Under Environmental Law)

The Disclosure Statement should explain the legal basis for the Plan's attempt to expand the definition of claim, 11 U.S.C. § 101(5), to include environmental equitable remedies that are not claims under the Code. *See Plan Definitions* 1.1.43, 1.1.64.

OBJECTION NO. 11 (Allowed Insured Claims)

The Disclosure Statement needs to explain the relationship between the Plan's provisions for Insured Claims (Section 6.5 of the Plan) and other Plan provisions. Will reserves be kept for such claims from other consideration in case there is a defense to insurance coverage, and if so in what amounts? Which claims do Debtors believe are covered by insurance? What is the position of insurance carriers and the litigation risks with respect to, and status of, any litigation? Are Debtors are trying to limit the liability of Reorganized Debtors for property owned or operated by the Debtors post-bankruptcy and if so what is the legal justification for such limitation, which would be contrary to In re CMC Heartland Partners, 966 F.2d 1143 (7th Cir. 1992)? Are Debtors trying to limit the liability of insurance carriers in any way, i.e., will insurance carriers continue to be liable to the covered party for the full allowed amount of any claim regardless of the amount that Debtors would pay on account of such claim in the absence of insurance?

OBJECTION NO. 12 (Disclosure of Environmental Claims)

The information in Section III.C regarding environmental claims is woefully inadequate. The Disclosure Statement simply ignores the largest environmental claims against G-1, specifically:

a. a claim of \$239,604,806 in anticipated response costs under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), at the Vermont Asbestos Group Site;

b. a CERCLA natural resource damages ("NRD") claim of \$12,628,622 at the Vermont Asbestos Site, on behalf of the U.S. Department of the Interior, Fish and Wildlife Service ("FWS");

c. a CERCLA NRD claims of \$81,040,000 at the GAF/LCP Sites in and about Linden, New Jersey, on behalf of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA") and FWS; and

d. a CERCLA response costs claim of \$3,254,386 for the Newark Bay Study Area portion of the Diamond Alkali Superfund Site, in and about Essex, Union, Hudson and Bergen Counties in New Jersey.

OBJECTION NO. 13 (ISP Assumption)

The Disclosure Statement fails to disclose the 1991 Assumption Agreement between ISP 6 Corp. and GAF Chemicals Corporation and how the Plan would or would not affect the Assumption Agreement. The Disclosure Statement should also indicate how claims covered by the Assumption Agreement, including NRD claims filed by the United States against the Debtors, with respect to among others the GAF/LCP and Diamond Alkali Sites, will be paid under the Plan and the justification for such treatment. Further, the Disclosure Statement should indicate whether Debtors intend to file claims against International Specialty Products, Inc. ("ISP") or any of its subsidiaries or affiliates to address claims brought by the United States against Debtors, with respect to the GAF/LCP, Diamond Alkali and other Sites that Debtors may

contend are covered under the Assumption Agreement, or whether the Debtors and ISP will stipulate to ISP's assumption of any liability arising from GAF's activities at or in relation to GAF/LCP, Diamond Alkali or other Sites.

OBJECTION NO. 14 (Intersection Between Asbestos Claims and Environmental Claims)

The Plan defines Environmental Claims to "not include or pertain to any Asbestos Claim [or] Asbestos Property Damage Claim." The Plan defines Asbestos Claims and Asbestos Property Damage Claims to "not include or pertain to" any Environmental Claim. The United States has filed an environmental Proof of Claim relating to asbestos with respect to the Vermont Asbestos Group Site. The Disclosure Statement needs a clear explanation for the benefit of creditors as to whether Debtors propose to treat the United States' Proof of Claim for this Site as an Asbestos Claim or an Environmental Claim.

OBJECTION NO. 15 (CCR Claim)

Further disclosure is also necessary relating to the proposed CCR settlement and justification for payment of what is described as 100% recovery to CCR, so as to leave Class 8 as unimpaired.

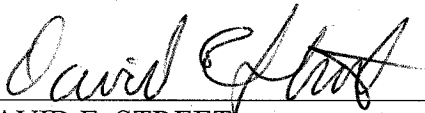
OBJECTION NO. 16 (Claims Reserve and Procedures)

Although the Plan provides for the post-confirmation liquidation of disputed claims, the Disclosure Statement provides no information as to the existence and funding of a claims reserve, or other mechanism to distribute value under the Plan to the holders of presently disputed unsecured claims that are liquidated post-confirmation, nor does it provide any estimate as to the amounts claimed by such holders.

WHEREFORE, the Disclosure Statement must be amended to address the above objections.

BRUCE S. GELBER
Chief
Environmental Enforcement Section

By:


DAVID E. STREET
DIANNE M. SHAWLEY
DAVID L. GORDON

Environmental Enforcement Section
Environmental and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-5471
david.street@usdoj.gov
dianne.shawley@usdoj.gov
david.l.gordon@usdoj.gov

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

CERTIFICATE OF SERVICE

I, David E. Street, an attorney, hereby certify that on November 28, 2008 I electronically filed the **UNITED STATES' OBJECTIONS TO DISCLOSURE STATEMENT FOR FIRST AMENDED JOINT PLAN OF G-I HOLDINGS INC. AND ACI INC. PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE, ON BEHALF OF THE DEPARTMENT OF THE INTERIOR, THE DEPARTMENT OF COMMERCE, AND THE ENVIRONMENTAL PROTECTION AGENCY** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record including the following:

Martin J. Bienenstock, Esq.
Judy G.Z. Liu, Esq.
Irena Goldstein, Esq.
Timothy Q. Karcher, Esq.
Dewey & LeBoeuf LLP
Co-Attorneys for the Debtors
1301 Avenue of the Americas
New York, NY 10019
Fax: 212-259-6333

Dennis O'Grady, Esq.
Mark E. Hall, Esq.
Riker, Danzig, Scherer, Hyland & Perretti LLP
Co-Attorneys for the Debtors
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
Fax: 973-538-1984

/S/

DAVID E. STREET
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-5471